IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA 1928

WP(C).No. 34465 of 2006(C)

CMA.81/2005 of ADDL. DISTRICT COURT, NORTH PARAVUR
OS.292/2005 of MUNSIFF COURT, PERUMBAVOOR

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PETITIONER:

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1. ANEESH, S/O.ABDULRAHIMAN (ANTHRU),
KOOLIYADAN, VENGOLA KARA, DO. VILLAGE.

2. PRAVEEN, S/O.CHANDRAN PILLAI,
ATTAYATHU, VAZHAPPILLIL HOUSE,
VENGOLA KARA, VENGOLA VILLAGE.

BY ADV. SRI.R.PREM SANKAR
SRI.B.PREMOD

RESPONDENTS:

RUGMINI, D/O.KANNAN,
PARAYANCHALIL, VENGOLA KARA,
VENGOLA VILLAGE.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO. 34465 OF 2006

Dated 1st January 2007

JUDGMENT

Petitioners are defendants and respondent is the plaintiff in O.S.292/05 on the file of Munsiff court, Perumbavoor. Respondent filed suit seeking a declaration for right of easement by grant over plaint B schedule property and for a permanent prohibitory injunction restraining the use of B schedule property as a way. First respondent filed I.A.2081/05, an application under Order XXXIX Rule 1 of Code of Civil Procedure seeking an order of temporary injunction. Under Ext.P1 order learned Munsiff dismissed the application holding that first respondent has got an alternative way and that fact was suppressed by him and therefore he is not entitled to the equitable relief of order of temporary injunction. First respondent challenged that order before the Additional District court, North Paravur in C.M.A.81/2005. Under Ext.P7 order learned Additional District Judge directed the parties to maintain status quo as

reported by the Commissioner in Exts.C1 and C2 reports and directed the Munsiff to dispose the suit as expeditiously as possible, untrammeled by any observations in Ext.P1 order. This petition is filed under Article 227 of Constitution of India challenging Ext.P7 order.

2. Learned counsel appearing for petitioners was heard. Argument of learned counsel is that learned Munsiff has rightly appreciated the facts in Ext.P1 order and there was no necessity to interfere with that order and so Ext.P7 order is to be quashed.

3. On hearing learned counsel appearing for petitioners, I do not find any reason to interfere with Ext.P7 order in exercise of the extra ordinary jurisdiction of this court under Article 227 of Constitution of India. Existence of alternative pathway, will not affect the right of easement by grant if any available to the plaintiff. Question whether first respondent has got a right of easement by grant is to be decided by the trial court on the evidence. Learned Munsiff did not grant an order of temporary injunction for the sole reason that first respondent suppressed the fact of alternative pathway, which is available to him which in fact

would not affect the right of easement claimed by first respondent. Whatever it be, under Ext.P7 order learned District Judge did not grant an order of temporary injunction in favour of first respondent. Learned District Judge only directed the parties to maintain status quo as reported by the Commissioner in Exts.C1 and C2 reports. Question whether first respondent has got a right of easement by grant and whether first respondent is entitled to the decree for injunction are all matters to be decided by the court on the evidence to be recorded. Learned Munsiff is directed to dispose the suit untrammeled by any observations in Exts.P1 and P7 orders or in this judgment.

Writ petition is disposed accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.